IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.546 OF 2005

IN

SUMMARY SUIT NO.2015 OF 2005

Mandakini Laxmikant Joshi & Ors. ...Plaintiffs.

Versus

M/s. Nimit Enterprises. ...Defendant.

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Mr. Kishor V. Tembe for the Plaintiffs.

Mr. Manesh Shukla i/b. Desai & Diwanji for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

June 19, 2007.

P.C.:

The First, Second and Third Plaintiffs are respectively, the widow, son and daughter of Laxmikant N. Joshi who died intestate in a road accident on 21st July 2004, leaving behind him, the Plaintiffs as his only heirs and legal representatives. The deceased was the sole proprietor of a concern by the name of Eljay Investments. The Defendant is a proprietary concern which is sued in the name of its sole proprietor who is the Karta and Manager of an HUF.

The suit under Order 37 of the Code of Civil Procedure, 1908, has been instituted for the recovery of monies lent and advanced by the deceased to the Defendant. An amount of Rs.10 lakhs was advanced to the Defendant in the months of April-May 1995. Until March 1999, an amount of Rs.15,000/- per month was paid by the Defendant from its Current Account bearing No.15044 maintained with the Bank of India. Subsequently, the rate of interest was by mutual consent reduced from 18% to 12% per annum. A letter of confirmation was issued by the Defendant in April 1999 for the period from 1st April 1998 to 31st March 1999 confirming that an amount of Rs.10 lakhs was due and payable as on 31st March 1999. Subsequently, letters of confirmation have been issued of the outstanding balance of Rs. 10 lakhs for the year ending 31st March 2000, 31st March 2001 and 31st March 2002. Further acknowledgments for the years ending 31st March 2003 and 1st April 2004 were issued by the Defendant. The last acknowledgment was that an amount of Rs.14,40,825/- was due and payable to the Plaintiffs.

On 10th January 2005, the Defendant paid an amount of Rs.1 lakh by two cheques. The Plaintiffs addressed notices of demand dated 22nd March 2005 to which there was no response. The claim in the suit is for an amount of Rs.15,56,948/- inclusive of interest. Further interest has been claimed.

At the hearing of the Summons for Judgment, Counsel appearing on behalf of the Defendant has placed reliance on the affidavit in reply. The affidavit in reply contains only bald denials. In the affidavit in rejoinder, the Plaintiffs have denied the allegation that compound interest has been charged. Significantly, there is no denial in the reply that the Defendant has paid interest initially at the rate of 18% per annum and thereafter at the reduced rate of 12% per annum or of the confirmation of liability. There is absolutely no merit in the defence.

Counsel appearing on behalf of the Plaintiffs has tendered a compilation of the original documents on the basis of which the claim in the suit stands established. The Defendant has duly

acknowledged its liability. The suit shall accordingly stand decreed as prayed save and except with the modification that the Plaintiffs will be entitled to interest at the rate of 12% per annum on the principal sum from the date of the suit until payment or realisation.

The Summons for Judgment is accordingly made absolute.

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